

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA.

-V-

GREGORY GUMUCIO.

Defendant.

23 Cr. 595 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On October 4, 2024, the Court held a hearing at which Defendant Gregory Gumucio pleaded guilty to one count of conspiracy to defraud the Internal Revenue Service in violation of 18 U.S.C. § 371. An element of that charge is the commission of an overt act in furtherance of the conspiracy. At that plea hearing, in response to the Court asking Defendant, “what, if any, act [he] did or was done in furtherance of” the conspiracy, he responded, “I didn’t file taxes.” And later, when asked to clarify his statement, Defendant stated that “[i]t’s accurate that we failed to file tax forms to not pay the taxes” and that he “deliberately did not file tax returns to avoid paying taxes.”¹

Defendant and the Government are directed to file simultaneous letter briefs, no later than November 5, 2024, addressing whether Defendant’s factual allocution was legally sufficient, especially as to the “overt act” element of the offense. *See United States v. Klein*, 247 F.2d 908, 916 (2d Cir. 1957) (“Mere failure to disclose income would not be sufficient to show the crime

¹ At another point during the proceeding, Defendant stated that “[i]t’s accurate that people paid in cash. It was a donation-based studio. And it was accurate that the teachers were paid in cash. And the teachers weren’t provided the required tax forms.” But when the Court inquired whether, “[w]hen clientele of the yoga studio paid in cash, . . . that [was] in furtherance of the agreement not to pay taxes”—that is, whether “the cash payments were being made . . . to avoid paying taxes”—Defendant responded “No.”

charged of defrauding the United States under 18 U.S.C. § 371.”). In those same letters, Defendant and the Government shall also address whether a further allocution is necessary.

SO ORDERED.

Dated: October 22, 2024
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", written over a horizontal line.

JOHN P. CRONAN
United States District Judge